

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

COMMISSIONER OF INSURANCE  
FOR THE STATE OF MICHIGAN,  
Petitioner,

v

File No. 98-88265-CR  
Hon. James R. Giddings  
A.G. No. 1998053333A

MICHIGAN HEALTH MAINTENANCE  
ORGANIZATION PLANS, INC., a  
Michigan health maintenance organization  
Doing business as OmniCare Health Plan  
Respondent.

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**REQUEST FOR LEAVE TO ADDRESS COURT AND  
BRIEF OF MICHIGAN STATE MEDICAL SOCIETY CONCERNING  
CLASSIFICATION AND PAYMENT OF CREDITORS' CLAIMS**

The Michigan State Medical Society ("MSMS") requests leave to bring to the Court's attention the issues raised in this Brief concerning the classification and payment of the claims of creditors of OmniCare Health Plan ("OmniCare"). MSMS is a state-wide association representing the interests of over 14,000 Michigan physicians who are committed to the health and well-being of their patients. Physicians who are MSMS members are OmniCare creditors. This request for leave by MSMS is consistent with MCLA §500.8101(3), which provides that the

purpose of Chapter 81 of the Insurance Code is to protect the interests of insureds, creditors and claimants, and the public.

By its order of May 5, 2005, the Court invited interested parties to present arguments on the issue of how claims in OmniCare's rehabilitation will be classed and paid under Chapter 81 of the Michigan Insurance Code. MCLA §500.8142 establishes the priority of the distribution of claims from an insurer's estate and provides as follows:

(1) Except as provided in subsection (2), the priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

(a) Class 1. The costs and expenses of administration . . .

(b) Class 2. Except as otherwise provided in this section, all claims under policies for losses incurred, including third party claims, and all claims of a guaranty association or foreign guaranty association. However, obligations of an insolvent insurer arising out of reinsurance contracts shall not be included in this class. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. For purposes of this section, life insurance and annuity policies include, but are not limited to, individual annuities, group annuities, guaranteed investment contracts, and funding agreement contracts, issued by an insurer. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. A payment by an employer to his or her employee shall not be treated as a gratuity.

(c) Class 3. Claims of the federal government.

(d) Class 4. All claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property that are not under policies and, to the extent not included in class 1, debts due to employees for services performed to the extent that they do not exceed \$1,000.00 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of the priority for debts due to

employees for services performed. The priority for debts due to employees for services performed is in lieu of any other similar priority authorized by law as to wages or compensation of employees.

(e) Class 5. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

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MCLA §500.8142 (emphasis added).

The claims of physicians, other health professionals and other health care providers should be classified and paid as Class 2 claims under MCLA §500.8142(b). Health maintenance organizations are obligated by statute to furnish their enrollees with designated health services. Unlike indemnity insurers, health maintenance organizations do not pay claims to enrollees. Rather, “losses incurred” by a health maintenance organization are the amounts payable to physicians, health professionals and other health care providers.

OmniCare’s patient population was principally enrolled through the Michigan Medicaid program. Since the State’s transition to Medicaid managed care, many interested parties have voiced—and continue to raise—concerns over the ability of Michigan’s dedicated physicians, hospitals and other committed providers to continue furnishing good quality care to their Medicaid patients within a system which typically fails to cover the cost of providing care and is plagued by the specter of financial instability. Michigan’s physicians, hospitals and other providers have continued furnishing quality care due to their commitment to their patients.

For the reasons stated above, as well as to achieve the equitable objectives of Chapter 81 of the Insurance Code, MSMS urges the Court to conclude that per MCLA §500.8142(b), “claims under policies for losses incurred, including third party claims” include those of OmniCare’s physicians, other health professionals and other health care providers. This

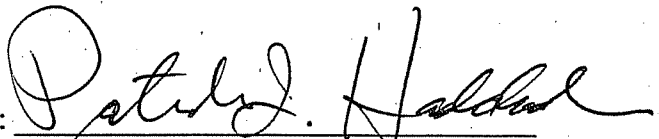
conclusion is in keeping with the principle of statutory construction that every word in a statute is presumed to have meaning, and the courts are to avoid any construction that would render any portion of a statute nugatory. *LaGuire v Kain*, 185 Mich App 239, 243, 460 NW2d 598 (1990) (citation omitted). Physicians, other health professionals and other providers must be made whole not simply to achieve equity and to fulfill the mandate of MCLA §500.8142(b), but out of practical necessity so that they may be in a position to continue doing what they do best for Michigan's Medicaid population.

**Relief Requested**

MSMS respectfully requests that the Court:

- A. Consider the important issues raised in this Brief and permit MSMS legal counsel to address the Court at the hearing of this matter, presently scheduled for July 20, 2005, at 4 p.m.
- B. Order the pre-rehabilitation claims of physicians, health professionals and other health providers classified and paid as Class 2 claims under MCLA §500.8142(b).

**KERR, RUSSELL AND WEBER, PLC**

By: 

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Dated: June 16, 2005

KERR, RUSSELL  
AND WEBER, PLC

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**PROOF OF SERVICE**

The undersigned certifies that a copy of the **REQUEST FOR LEAVE TO ADDRESS COURT AND BRIEF OF MICHIGAN STATE MEDICAL SOCIETY CONCERNING CLASSIFICATION AND PAYMENT OF CREDITORS' CLAIMS** was served upon the following parties:

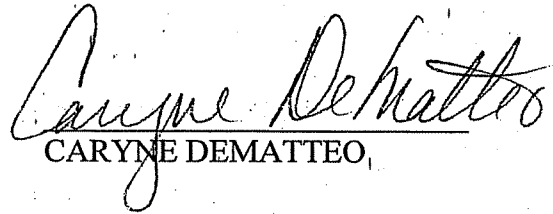
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KERR, RUSSELL  
AND WEBER, PLC

Ingham County Circuit Court Clerk  
Veterans Memorial Courthouse  
313 W. Kalamazoo – P.O. Box 40771  
Lansing, MI 48901-7971

via Federal Express Overnight delivery on June 16, 2005.

I declare under the penalty of perjury that the statement above is true and correct to the best of my information, knowledge and belief.

  
CARYNE DEMATTEO,